

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C. A. No.

\*\*\*\*\*

DIANE MURACH and MELISSA AUBUCHON, \*  
Plaintiffs \*

v. \*

J'S FOUR, INC. and JANET ARSENAULT, \*  
Defendants \*

\*\*\*\*\*

05 11265 MLW

RECEIPT # 65063  
AMOUNT \$ 250.00  
SUMMONS ISSUED 2  
LOCAL RULE 4.1 -  
WAIVER FORM -  
MCF ISSUED -  
BY DPTY. CLK. M.P.  
DATE 4/17/2005

COMPLAINT

1. Plaintiffs Diane Murach and Melissa Aubuchon assert their federal claims pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, et seq.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331.
3. Venue in the District of Massachusetts is proper under 28 U.S.C. §1391(b). The employment practices hereafter alleged to be unlawful were committed in the Commonwealth of Massachusetts.
4. Plaintiff Dianne Murach ("Murach") resides in Westminister, Massachusetts. At all relevant times she had been employed by defendant J's Four, Inc.
5. Plaintiff Melissa Aubuchon ("Aubuchon") resides in Westminister, Massachusetts. At all relevant times she had been employed by defendant J's Four, Inc.
6. Defendant J's Four, Inc., ("J's Four") is a Massachusetts corporation with an office in Fitchburg, Massachusetts. It is in the business of operating approximately fifteen Kentucky Fried Chicken stores in Massachusetts, New Hampshire and New York.

MAGISTRATE JUDGE Alexander

7. Defendant Janet Arsenault is the Treasurer, Secretary and one of the two Directors of J's Four. Upon information and belief Ms. Arsenault is one of the two primary shareholders of J's Four. Since approximately September, 2002, Ms. Arsenault has resided in Rindge, New Hampshire. Immediately prior to that she was a long time resident of Fitchburg, Massachusetts. Ms. Arsenault's husband -- John Arsenault -- is the President and one of the two Directors of J's Four. Upon information and belief Mr. Arsenault is the other primary shareholder of J's Four.
8. The Kentucky Fried Chicken stores which J's Four operates in Massachusetts and New Hampshire are owned by Jarsen Management of New England, LLC, a New Hampshire limited liability company owned by Janet Arsenault and John Arsenault.
9. The Kentucky Fried Chicken stores which J's Four operates in New York are owned by Jarsen Management of New Albany, LLC, another limited liability company owned by Janet Arsenault and John Arsenault.
10. During the third week of August, 1998, J's Four hired Murach as the Office Manager of Jarsen Management of Albany at the rate of \$30,000 per year.
11. As of August, 1998, J's Four was based in Fitchburg, Massachusetts, in the home owned by Janet Arsenault and John Arsenault.
12. From August, 1998, through September, 2002, Murach was required to work out of the Fitchburg, Massachusetts, home owned by Janet Arsenault and John Arsenault.
13. In approximately September, 1999, Janet Arsenault hired her daughter Jennifer Arsenault as the Office Manager of Jarsen Management of New England.

14. In or about the year 2001 Janet Arsenault asked Murach to become the Office Manager of Jarsen Management of New England while Jennifer Arsenault became the Office Manager of Jarsen Management of Albany. When this occurred, J's Four gave Murach a raise of approximately \$100.00 per week.
15. In September, 2002, the Arsenaults moved to Rindge, New Hampshire. With that move, the headquarters for J's Four moved to Rindge, New Hampshire. Murach then began to work out of the Arsenaults' home in Rindge, New Hampshire.
16. In approximately 1999 Murach had created a company document that was called the "FYI Sheet." On this form Murach (weekly or monthly depending on time) performed an internal audit of each store for any child labor law violations (29 U.S.C. §212; M.G.L.c. 149, §§65-67). Any discovered violations would be noted, and Murach would hand the form to Janet Arsenault and mail it to the stores with their payroll.
17. In approximately May, 2000, the State of Massachusetts audited Jarsen Management of New England and J's Four with regard to their compliance with applicable labor laws and child labor laws for the Gardner, Massachusetts, Kentucky Fried Chicken store. In advance of this audit Janet Arsenault and Jennifer Arsenault used the J's Four computer to alter the date of birth of one minor employee in hide a child labor law violation. The State audit as a result did not find any child labor law violations.
18. In approximately August, 2003, the U.S. Department of Labor audited Jarsen Management of New England and J's Four with regard to their compliance with applicable labor laws and child labor laws for the Derry, New Hampshire, store.

19. In advance of this audit John and Janet Arsenault went through the payroll records to check for child labor law violations. They found many violations. John and Janet Arsenault then used the J's Four computer to alter the time records to hide as many of the child labor law violations as they could by falsely recording the hours of the day that the underage employees worked. Not all of the violations could be hidden, however.
20. As a result this audit by the U.S. Department of Labor revealed various child labor law violations, primarily that Jarsen Management of New England and J's Four worked employees between the ages of 14 and 15 after the hours of 6:00 P.M. at night and longer than 3 hours on school days and more than 18 hours a week. They also worked 16 and 17 year olds past 10:00 p.m.
21. In approximately October, 2003, the U.S. Department of Labor audited Jarsen Management of New England and J's Four with regard to their compliance with applicable labor laws and child labor laws (29 U.S.C. §212) for the Salem, New Hampshire, store. Again, in advance of this audit Janet Arsenault used the J's Four computer to alter the time records to hide as many of the child labor law violations at this store as she could by falsely recording the hours of the day that the underage employees worked. Again, not all of the violations could be hidden, however. As a result this audit by the U.S. Department of Labor also revealed various child labor law violations.
22. Several times after this U.S. Department of Labor audit, Janet Arsenault, after receiving the FYI report, asked Murach if Murach had altered the time records (to hide the child labor law violations.) Murach each time avoided answering the question and would and did not alter the time records.

23. In May, 2004, John Arsenault told Murach that he thought it would be wise if Murach bought a house with an office in it so that she could work for J's Four and a possible new owner of the company -- Tom Bretz -- out of her own home.
24. As a result Murach put her Westminister, Massachusetts, house on the market and started looking for another house with an office in it. Within days Murach found a buyer for her home, and shortly after that she found another house, also in Westminister, Massachusetts, with an office in it. On August 30, 2004, she sold her home in Westminister, Massachusetts, and the next day she bought the other home in Westminister, Massachusetts.
25. On August 23, 2004, J's Four and Janet Arsenault hired plaintiff Aubuchon to work as office manager for Jarsen Management of New England. Her rate of pay was \$16.00 per hour. J's Four and Janet Arsenault then had Murach oversee Jarsen Management of New England and be the office manager for Jarsen Management of Albany.
26. Aubuchon starting working out of the Arsenault's home in Rindge, New Hampshire, for training. However, on October 4, 2004, Murach and Aubuchon officially began working out of the office in Murach's home in Westminister, Massachusetts, for J's Four.
27. With this move into the home office, Murach received the same hourly salary from J's Four as she previously was receiving but was now guaranteed 40 hours a week pay. Murach also received a \$50.00 per month payment for rent.
28. In the middle of October, 2004, Murach received a call from the auditors at the U.S. Department of Labor regarding the Derry, New Hampshire, store. They wanted to set up a time to perform an audit.



29. Learning of this Janet Arsenault asked Murach to get the time records for the Derry, New Hampshire, store ready for her. Murach gave Arsenault her copies of the FYI's to let her know what weeks there were child labor law violations if any. Arsenault took the records with her.
30. Arsenault returned to the Murach's home office in Westminister, Massachusetts, on or about October 20, 2004, a day or two before the audit was to take place. Arsenault was upset. She asked Murach why the payroll records had not been altered (to hide the child labor law violations.) Murach told Arsenault that the payroll records were not changed because it was against the law for her to change payroll records. Arsenault then said that if Murach and Aubuchon would not change the payroll records in the future, she would find someone else who would.
31. On January 2, 2005, Janet Arsenault and J's Four abruptly terminated the employment of Murach and Aubuchon.
32. Janet Arsenault and J's Four terminated the employment of Murach and Aubuchon because Murach and Aubuchon would not (illegally) alter the payroll records.
33. Murach and Aubuchon have suffered damages as a result of their termination from employment.

**COUNT I**

**(Fair Labor Standards Act, 29 U.S.C. §215)**

34. By the foregoing actions the defendants retaliated against Murach and Aubuchon because they for would not illegally alter the payroll records and hide the defendants' child labor law violations. Such retaliation violates 29 U.S.C. §215.

**COUNT II**

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

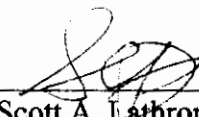
35. By the foregoing actions the defendants breached the implied covenant of good faith and fair dealing in the employment relationship with Murach and Aubuchon because they for would not illegally alter the payroll records and hide the defendants' child labor law violations.

**WHEREFORE** plaintiff demands:

- A. Judgment against the defendants;
- B. All lost moneys and benefits, including overtime and future pay;
- C. Compensatory damages;
- D. Liquidated damages
- E. Punitive damages;
- F. Attorney's fees;
- G. Interest and costs; and
- H. Any other remedy this Court deems meet and just.

**PLAINTIFF REQUESTS A JURY TRIAL**

Diane Murach  
Melissa Aubuchon  
By their attorney

  
\_\_\_\_\_

Scott A. Lathrop, Esq.  
Scott A. Lathrop & Associates  
122 Old Ayer Road  
Groton, MA 01450  
(978) 448-8234  
BBO No. 287820

Dated: June 14, 2005



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) MURACH V. J'S FOUR, INC.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- |          |  |
|----------|--|
| I.       | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.   |
| <u>X</u> | II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.                        |
| —        | III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. |
| —        | IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 960.                                      |
| —        | V. 150, 152, 153.  |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(F)).  
NONE
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? NO
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTERESTS? NO  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) \_\_\_\_\_
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? NO
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES NO
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES YES (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? CENTRAL
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? CENTRAL
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION NO OR WESTERN SECTION NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME SCOTT A. LATHROPADDRESS 122 OLD AYER ROAD, GROTON, MA 01450TELEPHONE NO. 978-448-8234

(Category form - 09/92)

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JS 44  
(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 Civil Cover Sheet and the information contained herein neither relieve nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

DIANE MURACHI and MELISSA AUBUCHON

## DEFENDANTS

J'S FOUR, INC., and JANET ARSENAULT

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

MIDDLESEX

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

SCOTT A. LATHROP, P.C.  
122 OLD AYER ROAD  
GROTON, MA 01450  
978-448-8234

ATTORNEYS (IF KNOWN)

05 11265 MLW

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item iii)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

VIOLATION OF FAIR LABOR STANDARDS ACT (29 USC 201)

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (20 USC 1095) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Asbestos 28 USC 159 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWV/DIWW (405(g)) <input type="checkbox"/> 864 SSIV Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7809	<input type="checkbox"/> 400 State <input type="checkbox"/> 410 Pinpointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc <input type="checkbox"/> 455 Discrimination <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Securities/Commodities Exchange <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 0410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other		

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

LOST MONIES

Check YES only if demanded in complaint

JURY DEMAND:

☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

NONE

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT